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## Board of Building Regulations and Standards (BBRS)

June 11, 2019 Meeting

Tewksbury Hospital Events Room  
365 East Street – Tewksbury - 01876

Chairman Couture opened the meeting at approximately 10:20 a.m.

Chairman Couture took roll call as follows:

John Couture, Chair	✓ present <input type="checkbox"/> absent	Peter Ostroskey*	✓ present <input type="checkbox"/> absent
Kerry Dietz, Vice Chair	✓ present <input type="checkbox"/> absent	Michael McDowell	✓ present <input type="checkbox"/> absent
Richard Crowley, Second V. Chair	✓ present <input type="checkbox"/> absent	Susan Gleason	✓ present <input type="checkbox"/> absent
Kevin Gallagher	✓ present <input type="checkbox"/> absent	Lisa Davey	✓ present <input type="checkbox"/> absent
Cheryl Lavalley	<input type="checkbox"/> present ✓ absent	Steve Frederickson	✓ present <input type="checkbox"/> absent
Robert Anderson	✓ present <input type="checkbox"/> absent		

\* Jen Hoyt participated as the designee for State Fire Marshal, Peter Ostroskey.

### General notes on format of these minutes

- These minutes represent general points discussed by Board members and/or audience attendees. The minutes are not intended to be a verbatim account of discussions.
- Votes are noted as **MOTION** by, seconded by, and whether it was a unanimous or split vote.
- Agenda topics as numbered may be in the same order as they appear on the meeting agenda.
- The meeting agenda is listed as **EXHIBIT A**; others are listed sequentially as addresses during the meeting.

### Code Change Proposals

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Board members began with a review and vote on code change proposals submitted during the May Public Hearing.

1. **Proposal Number 5-1-2019** – Consider revising Chapter 34, Section 302.6 pertaining to masonry parapets.

**Proponent:** Corey Matthews, P.E., Gale Associates, Inc.

Cesar Lastra indicated that members of the Structural Advisory Committee (SAC) reviewed the proposal earlier in the year. Although SAC members thought it had merit, they believed it was more appropriate for a change to Chapter 1 administrative requirements.

On discussion, Richard Crowley suggested that the measure was burdensome. Following a short debate, on a **MOTION** by Kerry Dietz, seconded by Michael McDowell it was unanimously **VOTED** to forward the proposal to the OPSI group who is reviewing Chapter 1 requirements for the tenth edition code.

2. **Proposal Number 5-2-2019** – Consider revising the International Energy Conservation Code (IECC) Chapter 13, Section C401.2.4 (as amended) pertaining to vertical fenestration.

**Proponent:** NAIOP of Massachusetts CEO, Tamara Small

Proponent Tamara Small was present and testified that the proposal intends to revert back to prior requirements for wall fenestration requirements. The most recent language adopted by Board members would allow no more than 24% fenestration on a given building. Winthrop Square, a prominent building in the City of Boston, is comprised of wall areas with 47% fenestration, so are many others. Ms. Small suggested that the requirement limits design options and should be reversed.

In contrast, audience member, Jacob Knowles, suggested that window to wall ratio requirements are only one part of energy modeling and designers can be creative to make-up energy savings elsewhere and Energy Advisory Committee (EAC) chairman, Ian Finlayson, indicated that a large sampling of newer buildings constructed in the area were reviewed to determine average window to wall ratios; the average of which turned out to be 24%.

Next, Chairman Couture called for testimony on:

- **Proposal Number 5-3-2019** – Consider revising the International Energy Conservation Code (IECC) Chapter 13, Section C405.3.2 (as amended) pertaining to interior lighting allowances.

**Proponent:** NAIOP of Massachusetts CEO, Tamara Small

Proponent Tamara Small testified that Section C405.3.2 as modified and approved by Board members for inclusion in the new energy code goes well beyond 2018 IECC requirements, requiring a light power reduction of 32%. Ms. Small expressed that the general law requires Board members to adopt the latest version of the IECC, but does not suggest that it should be stretched to new limits and therefore encouraged Board members to adopt un-amended 2018 IECC language.

OPSI Building Inspector, William Horrocks, testified that the limited interior lighting allowances are causing some difficulties with regard to emergency procedures.

Kevin Rose, who proposed the more restrictive requirements adopted by Board members, suggested to the revised levels are not extreme. In fact, he continued, studies have demonstrated that buildings in Massachusetts and other parts of the nation are already achieving levels defined by the revised section.

In response to a question by Board member, Kerry Dietz, Counsel Kilb indicated that proposals reviewed during today's hearing could be considered for revision of the ninth edition or inclusion in the tenth.

Chairman Couture then asked for testimony on:

- **Proposal Number 5-4-2019** – Consider revising the International Energy Conservation Code (IECC) Chapter 13, Section C406.1 (as amended) pertaining to energy efficiency.

**Proponent:** NAIOP of Massachusetts CEO, Tamara Small

In response to guidance by Counsel Kilb, proponent Tamara Small indicated that Board members advised during their March meeting that proposal could be offered and considered for change of newly adopted energy code provisions prior to implementation on January 1, 2020. Ms. Small indicated that her proposals are intended to revise the new code before it goes into full effect. With regard to this proposal, Ms. Small indicated that the section artificially raises baseline requirements.

In response to a question by Chairman Couture, Ms. Small indicated that she has not met with members of the EAC to discuss concerns thinking that offering change proposals was more appropriate. Ms. Small indicated that, if there is still confusion with regard to new energy code requirements, the process should be slowed.

OPSI Counsel Kilb made it clear that, based on the Board's vote of approval, new energy code provisions are going into effect in January, 2020.

Audience member and AIA representative, John Nunnari, suggested that new code requirements have been under review for over a year and implementation should not be delayed further. Mr. Nunnari indicated that a review by NAIOP and members of the EAC may be good and may help explain new code requirements, but it should not be used as a method to interfere with adoption of new, enhanced energy conservation provisions on January 1, 2020.

Chairman Couture then called for testimony on:

- **Proposal Number 5-5-2019** – Consider revising the International Swimming Pool & Spa Code (ISPSA), Chapter 3, Section 305.1 concerning exemption to barrier requirements.

**Proponent:** BBRB Chairman, John Couture.

Chairman Couture introduced the topic as the proponent, but made it clear that it was not his intention to include hot tubs and/or spas in the discussion. The proposal intends only to initiate discussion with regard to barrier requirements for in-ground swimming pools vs. the exemption allowed for power operated pool covers. Chairman Couture indicated that he was not aware that the code allowed installation of a power cover in lieu of a barrier until a permit applicant requested approval. Chairman Couture expressed concern that since a cover requires activation whereas a fence or other barrier is in place 24/7.

Board member, Steve Frederickson, indicated that the exemption has been available for a while and advocated that we stay consistent with International Code requirements. He further indicated that he has a pool with a fence in his yard, yet a brook, without barrier protection, runs just behind it.

Audience member and pool product manufacturer, Mike Fox, indicated that the majority of injuries and/or fatalities occurring in/around pools relate to young children who live at the home or are relatives and who are already inside the pool barrier. Mr. Fox agreed that a pool cover must be engaged, but the same is true for a pool gate. The safety cover has been demonstrated to be a deterrent and it is obvious. Mr. Fox indicated that 11 states allow the exception, with only a few recorded instances.

*Pool and Hot Tub Alliance* representative, Charlie Stefanini, testified and submitted written testimony (**EXHIBIT D**) that he appreciates Chairman Couture's concern, but agreed with Mr. Fox that a power pool cover provides equal or better protection.

Following testimony on the 5 written proposals submitted prior to the hearing, Chairman Couture allowed further testimony on the net zero concept and any other code change proposal that may be offered. In recognition of additional agenda items requiring attention, Chairman Couture asked attendees to limit testimony to 3 minutes and to refrain from repetitious testimony.

Audience members and representatives of the City of Cambridge, Boston and Somerville testified in support of net zero code requirements expressing that the mayors of their respective cities have established aggressive goals to achieve carbon neutrality over the next several years; each believes the code needs to be revised to support these initiatives.

Board member Kerry Dietz recognized the bold initiatives, but indicated that she works as an architect, often involved with affordable housing projects and indicated that there is a cost to achieving net zero buildings and the Department of Housing and Community Development (DHCD) does not take net zero requirements into consideration.

Before moving to other code change topics, numerous other attendees testified in support of adopting net zero code requirements. Some advocated for immediate change to stretch energy code requirements to achieve net zero goals, others requested change to base code requirements over time with targets of 2025 – 2030 to achieve net zero requirements for all buildings. All expressed urgency.

Board member, Jen Hoyt, introduced and distributed a proposal to establish a new special use classification under 780 CMR, Chapter 4 for indoor agriculture facilities. Jen expressed that the proposal stems from her work with the Board's Cannabis Study Group (CSG). Jen mentioned it is intended as a starting point for discussions on a special use category and suggested that it should be reviewed by the CSG.

Mike McDowell expressed concern with the proposal indicating that it may upset the farming community.

Following a brief discussion, it was agreed to forward the proposal to GSG.

On a **MOTION** by Mike McDowell seconded by Kerry Dietz it was unanimously voted to close the public hearing portion of the meeting @ approximately 1:05 p.m.

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### Regular Meeting Portion

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1. **BBRS Minutes.** On a **MOTION** by Jen Hoyt seconded by Mike McDowell it was voted in the majority to approve the minutes for the April 2, 2019 Board of Building and Regulations and Standards (BBRS) meeting as submitted (**EXHIBIT E**).

2. **BOCC Minutes.** Board members tabled action on the April 1, 2019 Building Code Certification Committee (BOCC) minutes.
3. **Discuss Progress Towards Tenth Edition 780 CMR.** Rob Anderson introduced Damian Siebert from the Geotechnical Advisory Committee (GAC) who will present recommended revisions to the International Building Code (IBC), Chapter 18 on behalf on the committee. Rob indicated that GAC Chairman, Chris Erickson, was not able to attend the meeting due to a prior engagement and therefore asked Damian to present recommended changes. Rob indicated that Damian is prepared to review the changes line by line if Board members desired or handle another way.

Chairman Couture indicated that read the entire proposal and was pleased with the intent, suggesting that Board members have a general discussion rather than line by line review.

In response to questions from Board members Kerry Dietz and Steve Frederickson, Damian explained that GAC members reviewed each change made to the 2015 IBC that comprises the ninth edition amendment package in order to determine whether the language remains relevant. In all but a few instances, GAC members believe that the ninth edition changes should be made part of the tenth edition as well since they better provide for specific soils conditions in\around the area. Although GAC members recognize desires to adopt un-amended IBC language if at all possible, Damian indicated that most proposed revisions equate to cost savings for Massachusetts construction projects. For example, Damian continued, presumptive soils bearing pressure values in the IBC are rather generic whereas GAC members offer values more specific to soils conditions in the area.

In response to a question from Board member Rich Crowley, Damian indicated that some suggested changes could be presented to the International Code Council (ICC) for inclusion in the next version. ICC Vice President of Government Relations, Dottie Harris, offered assistance with presenting changes to the ICC.

Chairman Couture and all Board members thanked Damian and GAC members for their work and agreed to move the referenced changes forward to the tenth edition.

4. **Discuss ICC PRONTO exams.** ICC Vice President of Government Relations, Dottie Harris, presented a memorandum dated May 7, 2019 (**EXHIBIT F**) and introduced Michelle Murphey Porter to address the matter in further detail. Ms. Porter recognized that some Board members and perhaps others may have some concerns with the manner in which PROTO exams are administered. Ms. Porter indicated that the exams afford a candidate with an opportunity to take certification exams in the comfort of his\her home or elsewhere at any time during the day. Exam administrations are closely monitored and statistics indicate that there are virtually no differences in pass rates with PROTO vs. conventional exam administrations. Ms. Porter indicated that, like most processes, there are some incidents requiring attentions, but they are few; usually about 6 – 9 issues per year out of 50,000 exams administered.

Chairman Couture thanked Ms. Harris and Porter for the presentation and indicated that there was some concern with the legitimacy and manner in which the exam is administered, but those concerns have been adequately addressed.

OPSI Counsel Kilb indicated that Board members had already approved the process in 2017, so no further action is required unless Board members wanted to take a differing stance.

All agreed that concerns have been addressed and the approval stands.

5. **Discuss Progress of the Manufactured Buildings Study Group.** Dan Walsh detailed study group efforts and presented recommended revisions to 780 CMR, Chapter 110.R3, the Manufactured Buildings Program Rules and Regulations, as well as associated program processes. Dan revealed that:
- The group was tasked by BBRS Chairman, John Couture, on January 9, 2018 to review program regulations and procedures to determine suggestions for improvements.
  - The group met on 8 different occasions to review regulations and procedures, allowing broad public in-put throughout the process.
  - The group compared Massachusetts programmatic requirements to other states, and studied the role of the Third Party Inspection Agent (TPIA) more closely.
  - Ultimately, group members determined that they would propose a re-write of program regulations using eighth edition requirements as the base, overlaying portions of the ninth edition regulations and adding specific requirements to help better establish specific roles of those involved in the process (manufacturer, TPIA, installer, CSL, municipal inspection authorities and others).

Dan highlighted many of the changes proposed in the *final draft version* of 780 CMR, Chapter 110.R3 (**EXHIBIT xx**); including but not limited to new and/or refined definitions for:

- *Installer*;
- *Manufactured Building Certificate*; and
- *Installer Certificate*.

Dan further noted that the group has asked for Board members to assist in determining an appropriate definition for *irreparably damaged product*. Dan noted that the definition of *irreparably damaged product* has been the subject of litigation where it was ruled that near any building\structure may be repaired on-site, albeit at an expense. Dan indicated that the group attempted to refine the term, changing it to *significantly damaged* and drawing on Board members to help determine when product is damaged to a point where it must be returned to the factory rather than repaired in-place.

In response to a question from Mike McDowell, Dan made it clear that Board members would not need to visit the site to help make a determination. Rather, Dan, as program director, along with the Office of Public Safety & Inspections (OPSI) inspector for the area would review the matter and report their findings to Board members during an open meeting.

Following discussion, Board members agreed with the concept, but **asked that the definition for *significantly damaged product* be revised to make it clear that the Board may designate someone or some-body (i.e. the Building Code Appeals Board) to act on their behalf.**

Dan noted that it appears clear that an installer of manufactured building product needs to be present for the entire set to ensure that all requisite connections and other details as established by the manufacturer have been performed correctly, but the role of the licensed construction supervisor is less clear. Therefore, Dan asked for Board members to determine whether or not a licensed construction



supervisor needs to be in control of a project from start to finish or if it is acceptable to allow a homeowner to assume responsibility at a certain point. Dan explained that, due to difficulties in years past, homeowners were prohibited from securing building permits for manufactured building projects. However, it was never clear as to whether or not a homeowner was barred for the entire project.

Mike McDowell indicated that he was comfortable with a homeowner taking control of a project once the boxes have been appropriately installed as required by the manufacturer and once life safety concerns have been addressed. Mike and others indicated that a homeowner is typically capable of installing trim work, papering\painting and other aesthetic work. Mike suggested that the role of the licensed supervisor should be made clear at the permit stage and it should be noted whether or not a homeowner will be involved in the project at some point. **Dan indicated that he will work with group members to make it clear when a homeowner may assume project control.**

In response to questions from Board members, Dan indicated that both installers and\or other licensed personnel can change as a project progresses, but he noted that municipal permitting authorities need to be aware of the changes and permit files\applications must be amended to reflect any changes. Dan emphasized the importance of local code enforcement personnel in assuring a quality project. Dan indicated that he has developed and delivered several courses of education that have been presented to municipal inspectors and others and will continue to offer more courses to help better define the role of all parties involved in a manufactured building project. **Chairman Couture indicated that the regulation should make it clear that the installer reports to the licensed construction supervisor (CSL).**

In response to questions from Rich Crowley and Mike McDowell, Dan made it clear that the revised regulation requires any manufactured building installer and\or CSL involved in the process to be educated with regard to program duties, responsibilities and expectations. Dan noted that it is the intention that installers and CSLs will attend educational programs designed and delivered by OPSI personnel, not private sector parties, but Board members could decide differently if they wanted to broaden who may provide education. **Chairman Couture noted that any education offered by private sector personnel (if allowed) should be reviewed by OPSI staff to ensure that a common\consistent message is delivered.**

**Kerry Dietz noted that she is confused by some of the terminology and requested that the group review terms and acronyms to be sure that they are clear and easily understood.**

**Lisa Davey noted that she remains concerned that larger product is not being tied together properly and may not function as intended when subjected to wind conditions. Lisa suggested that engineering peer review should be required for certain projects. Dan noted that he will work with Lisa on this issue.**

**Members of the public noted that the municipal building inspector should be required to be present during the set of manufactured building product and all manufacturers should be registered with the Secretary of State.**

Both Kerry Dietz and Chief Gallagher commended Dan in particular and the group in general for their work in developing suggested changes. Chief Gallagher noted that it was a most transparent process that allowed extraordinary participation from the public and that he is pleased with the result.

Board members then debated the best and most expeditious manner in which to advance the regulations to public hearing. Following discussion, it was determined that the study group would meet one final time to incorporate final changes into the regulations as herein discussed and that Chief Gallagher would monitor the process to ensure that the changes are incorporated as intended.

Accordingly, on a **MOTION** by Jen Hoyt, seconded by Mike McDowell, it was unanimously voted to advance the regulation through the process with the goal of convening a public hearing in August to review the final, proposed regulations. Board members requested that the final, draft document be ready for distribution at least two (2) weeks prior to the hearing date.

OPSI Counsel, Charles Kilb, noted that this action defines a very tight schedule that may\may not be able to be met, but he would do everything possible to assist in achieving the goal.

6. **Discuss approval of 174 new CSLs issued in the month of March, 2019.**

Board members acknowledged approval of the new CSLs issued.

7. **Discuss CSL Average Passing Score\Medical\Military\ Age or Continuing Education Requirements.**

On a **MOTION** by Kerry Dietz, seconded by Mike McDowell it was unanimously voted to approve issuance of a construction supervisor license to Dave Rice based on an average passing score condition.

8. **Discuss other matters not reasonably anticipated 2 business days in advance of meeting.**

None this month.

9. **Executive Session** regarding Michael Humphrey CSL Continuing Education Request.

On a **MOTION** by Mike McDowell, seconded by Jen Hoyt, a roll call vote was taken to end the regular meeting @ approximately 1:40 p.m. and convene an executive session to discuss the referenced topic, all Board members voted in the affirmative.

**EXHIBITS:**

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- A. Meeting Agenda.
- B. Senator Joanne Comerford submitted written testimony.
- C. *Massachusetts Climate Action Network* written comment.
- D. *Pool and Hot Tub Alliance* written testimony.
- E. Minutes for April 2, 2019 Board of Building and Regulations and Standards (BBRS) meeting.
- F. Memorandum dated May 7, 2019 regarding **PRONTO** Exams.